

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DONNELL W PRICE,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C14-5011 BHS-JRC

ORDER GRANTING PETITIONER'S  
MOTION TO STAY

The District Court has referred this petition for a writ of habeas corpus to United States Magistrate Judge J. Richard Creatura. The authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4. Petitioner seeks relief from a state conviction. The petition is filed pursuant to 28 U.S.C. § 2254.

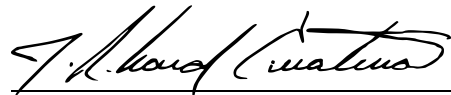
Petitioner has filed a motion to stay his habeas corpus petition and hold it in abeyance pending a ruling by the Washington State Supreme Court on a personal restraint petition that he is filing to exhaust a "double jeopardy" claim (Dkt 21). Petitioner had received relief through a personal restraint petition and was resentenced (Dkt. 20, Exhibit 15). The double jeopardy claim is a result of the resentencing. Respondent states that he does not object to petitioner's motion (Dkt. 22).

1 A district court may stay a petition if: (1) petitioner has “good cause” for failure to  
2 exhaust the claims in state court; (2) the unexhausted claims are potentially meritorious; and (3)  
3 there is no indication that petitioner intentionally engaged in dilatory litigation tactics. *Rhines v.*  
4 *Weber*, 544 U.S. 269, 278 (2005).

5 Petitioner’s petition meets these criteria. Petitioner filed his motion within two weeks of  
6 receiving respondent’s answer and learning that his “double jeopardy” claim had not been  
7 exhausted. Petitioner states that he believed the claim had been exhausted in the Washington  
8 State Supreme Court and learned it was only raised in the Washington State Court of Appeals  
9 (Dkt. 21). Petitioner states he is not filing the motion for an improper purpose (*id.*).

10 The Court GRANTS the motion to stay this petition and hold it in abeyance. The matter  
11 is stayed until December 31, 2014. Petitioner will file a report and a motion to extend the stay  
12 on or before December 21, 2014 -- ten days before the stay ends. Petitioner will inform the  
13 Court of the status of the state proceedings. The report will include the state court cause number.  
14 Should the state court dismiss the petition or terminate review, petitioner will inform the Court  
15 and file a motion to lift the stay within 30 days of the state court’s action. Petitioner’s failure to  
16 file a proper report or inform the Court of the termination of state review may result in the Court  
17 issuing a report and recommendation that this petition be dismissed

18 Dated this 7<sup>th</sup> day of July, 2014.

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21 J. Richard Creatura  
22 United States Magistrate Judge  
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